

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2005 CA 0963

SYLVIA W. HAMILTON

VS.

STATE OF LOUISIANA, THROUGH LOUISIANA STATE
UNIVERSITY, OFFICE OF RISK MANAGEMENT

JUDGMENT RENDERED: MAY - 5 2006

ON APPEAL FROM THE
OFFICE OF WORKERS' COMPENSATION ADMINISTRATION,
DISTRICT 5
DOCKET NUMBER 03-09280
PARISH OF EAST BATON ROUGE, STATE OF LOUISIANA

HONORABLE JASON G. OURSO, JUDGE

SYLVIA W. HAMILTON
BATON ROUGE, LA

PLAINTIFF/APPELLANT

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SYLVIA W. HAMILTON

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STATE OF LOUISIANA, THROUGH LOUISIANA
STATE UNIVERSITY, OFFICE OF RISK
MANAGEMENT

BEFORE: PARRO, MCDONALD AND HUGHES, JJ.

Parro, J., dissents with reasons.

MCDONALD, J.

This is an appeal of the dismissal of a workers' compensation claim based on a finding that the employee's claim for indemnity benefits had prescribed. For the following reasons, we reverse and remand for a hearing.

According to her disputed claim for compensation benefits, Sylvia Hamilton (Hamilton) was employed by Louisiana State University (LSU) on December 21, 2001, when she fell on newly waxed stairs and was injured. The claim form was filed December 19, 2003. Thereafter, LSU filed a peremptory exception raising the objection of prescription. In June 2004, Hamilton, a pro se litigant, and LSU appeared before a workers' compensation judge (WCJ) for District 5 for the hearing on LSU's exception.

Following argument on behalf of LSU, the WCJ asked Hamilton if she understood LSU's position. Hamilton answered, "A little bit." The WCJ then explained that "[b]asically the state's position is that you filed your claim for weekly disability benefits too late" and inquired if Hamilton had any response to that. Hamilton replied in the affirmative, whereupon the WCJ asked her to please stand and "state your position," but did not swear Hamilton in. Hamilton described the facts concerning the accident, her medical treatment and work history since the accident, and why she had not filed a claim prior to December 2003. According to Hamilton, she had been advised by human resources personnel that LSU would file the workers' compensation claim, that all she needed to do was file the accident report and turn in a leave slip showing workers' compensation when she missed work to go to the doctor, which she did.

Further, Hamilton stated that she worked in pain for two years, but had been advised by her doctor in November 2003 that she could not work

any more. Hamilton also answered questions asked by the WCJ. Counsel for LSU did not question Hamilton. The WCJ found that the case had prescribed, the claimant had failed to prove any type of interruption or suspension, and dismissed the case. Hamilton timely filed this appeal.

LSU argues that the judgment of the WCJ should be upheld because Hamilton did not submit any evidence or sworn testimony that would indicate that prescription had been interrupted or had not yet commenced to run. Hamilton's statement contained two grounds that could possibly defeat the finding of prescription. However, the statement was not under oath, so arguably would not be "competent evidence" as required by La. R. S. 23:1317. See *Hudson v. East Baton Rouge Parish School Board*, 2002-0987 (La. App. 1st Cir. 3/28/03), 844 So.2d 282.

Under the facts of this case, we conclude that the WCJ erred in not insuring that Hamilton's testimony was sworn, and in effect, deprived her of an opportunity to present evidence at the hearing. See *Peters v. Ruskin Mfg.* 39,535 (La. App. 2nd Cir. 4/6/05), 899 So.2d 780, 783. Therefore, the judgment dismissing Hamilton's claim is reversed, and the matter is remanded for a new hearing at which Hamilton is to be given an opportunity to present evidence in opposition to the exception. This memorandum opinion is issued in compliance with Uniform Rules – Courts of Appeal Rule 2-16.1.B. Costs in the amount of \$4,708.50 are assessed to Louisiana State University.

REVERSED AND REMANDED.

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VERSUS

**STATE OF LOUISIANA,
THROUGH LOUISIANA STATE UNIVERSITY,
OFFICE OF RISK MANAGEMENT**

BEFORE: PARRO, McDONALD, AND HUGHES, JJ.

 **PARRO, J., dissenting.**

The defendant in this case filed a peremptory exception raising the objection of prescription as to the disputed claim filed by Sylvia Hamilton. If the facts alleged in a petition do not show that a claim has prescribed, the burden is on the party raising the objection of prescription to prove it. Conversely, if a claim is prescribed on the face of the pleadings, the burden is on the claimant to show that prescription has not tolled because of an interruption or a suspension of prescription. Boudreaux v. Angelo Iafrate Const., 03-2260 (La. App. 1st Cir. 2/4/05), 895 So.2d 596, 598.

Here, the claimant's disputed claim form (which serves as her petition), filed on December 19, 2003, sets forth allegations that Ms. Hamilton was injured December 21, 2001, while working at Louisiana State University, that she reported the accident to her department head, and that she was provided medical attention by a number of named physicians. She identified possible witnesses. On the face of her disputed claim form, her claim was prescribed; therefore, Ms. Hamilton had the burden of showing, at the hearing on this matter, that the running of prescription was suspended or interrupted in some manner. Jonise v. Bologna Brothers, 01-3230 (La. 6/21/02), 820 So.2d 460, 464.

At the trial of a peremptory exception, evidence may be introduced to support or controvert any of the objections pleaded, when the grounds thereof do not appear from the petition. LSA-C.C.P. art. 931. At the hearing on this matter, the workers' compensation judge heard the argument of counsel for the State of Louisiana and then questioned Ms. Hamilton. Even under the relaxed evidentiary rules applicable in workers' compensation proceedings, the argument of counsel and the unsworn testimony of a pro se litigant are not competent evidence. Hudson v. East Baton Rouge Parish School, 02-0987 (La. App. 1st Cir. 3/28/03), 844 So.2d 282, 287. In the absence of any evidence supporting the possible application of the developing injury doctrine to this case, Ms. Hamilton failed to establish that her claim had not prescribed. Therefore, the trial court properly sustained the defendant's exception raising the objection of prescription.

The fact that Ms. Hamilton was representing herself at the hearing in this matter and possibly lacked knowledge of the procedural and substantive law applicable to her case is of no moment. Although a lay person representing himself or herself cannot be held to the same standards of skill and judgment that must be attributed to an attorney, he or she assumes responsibility for his or her own inadequacy and lack of knowledge of both procedural and substantive law. Hudson, 844 So.2d at 285 n 2. Contrary to the majority's holding, the law does not impose a duty on the workers' compensation judge to "insure" that the statements made by Ms. Hamilton were made under oath. See Hudson, 844 So.2d at 287.

For these reasons, I respectfully dissent.